

## **REMARKS**

### **SUMMARY OF THE OFFICE ACTION**

In the Office Action, Claims 1, 2, 4-12 and 14 were rejected under 35 U.S.C. § 103(a) as being unpatentable over David, et al. (U.S. Patent No. 6,792,125) in view of Blattner (U.S. Patent No. 1,965,405). Claim 3 was rejected under 35 U.S.C. § 103(a) as being unpatentable over David in view of Blattner and further in view of Pfister (U.S. Patent No. 6,612,262).

Claim 13 was objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

With respect to Applicant's arguments submitted May 20, 2005, the Examiner indicated that Applicant's arguments with respect to Claims 1-5 and 7-14 have been considered but are moot in view of the new grounds of rejection. With respect to Claim 6, the Examiner stated that "the recitation of a rear surface clearly holds no weight in the absence of the recitation concerning a front surface."

### **APPLICANT'S RESPONSE**

#### **Claim 13**

Claim 13 was objected to as being dependent upon a rejected base claim but was indicated as being allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. By this Amendment, Applicant incorporates the limitations of intervening Claims 5, 6 and 12 as well as base Claim 1 into Claim 13. Accordingly, Applicant respectfully submits that Claim 13 is now in condition for allowance.

#### **Claims 1-12 and 14**

In the Office Action, Claim 1 was rejected under 35 U.S.C. § 103 as being unpatentable over David, et al. in view of Blattner. Applicant respectfully disagrees. Claim 1 recites a midrange/tweeter module which comprises a midrange speaker and a separate tweeter speaker. David et al. does not disclose such a limitation. The Examiner

refers Applicant to Figure 4, page 1, lns. 1-48 and page 2, lns. 99-120 to show that Blattner discloses “a combination of midrange and tweeter speakers in conjunction with a woofer.” (office action, pg. 3). However, Blattner does not disclose a midrange/tweeter module which comprises a midrange speaker and a separate tweeter speaker. Nor does Blattner disclose any implementation for arranging three speakers in a coaxial arrayed manner. The illustration and discussion in Blattner are merely conceptual, and not enabling of a three speaker coaxial construction. (Blattner, Figure 4; page 2, lines 99-121.)

Applicant submits that in order to implement the present invention the construction of the midrange/tweeter module must be implemented in a module housing which is sized, eg minimized, in relation to the size of the base speaker in order to facilitate efficient operation of the base speaker. Similarly, axial space in between the midrange/tweeter module and the base speaker must be by a distance that also permits efficient operation of the base speaker, yet without unduly extending the axial length of system. Further, support for the midrange/tweeter must be implemented in a manner that again allows for the above referenced considerations, without degrading the operation of either the midrange/tweeter module or the base speaker.

As such, the actual implementation of the present invention involves not only conceptual features, but a marriage of practical considerations that include acoustic and mechanical considerations that are not known to have been harmonized in any speaker system prior to Applicant’s invention. As such, Applicant submits that the present invention is hardly a trivial implementation that merges structure and acoustic functionality in ways that have not been implemented before.

Section 2121.04 of the MPEP states that “an enabling picture may be used to reject claims to an article. However, the picture must show all the claimed structural features and how they are put together.” (emphasis added). *Jockmus v. Leviton*, 28 F.2d 812 (2d. Cir. 1928). Blattner does not show a midrange/tweeter module, nor how any three speaker configuration can be constructed. Accordingly, Blattner does not disclose the invention recited in Claim 1. Moreover, as set forth below, other than the present

application there appears to be no indication that one of ordinary skill would be motivated to construct or understand how to construct the claimed invention.

The David reference discloses a construction wherein a tweeter and woofer are mounted coaxially, with the tweeter pivotable relative to the woofer. However, the David reference does not disclose a three speaker construction, formed along a common axis.

Indeed, the prior art shows no actual construction of a three speaker system formed along a common axis. The closest prior art appears to be the conceptual implementation of Blattner, which shows no supporting structure for the three speaker construction shown at Figures 3, 4. That is not entirely surprising insofar as the substance of the Blattner reference is directed to the diameters of the speaker diaphragms, not the physical means for supporting and maintaining the speakers in a particular orientation in a particular location. The only supporting structure shown in the Blattner reference is in relation to the two speaker configuration shown at Figure 5 (See strut 36 and flange 37).

Applicant submits that the construction of a three speaker arrangement, wherein the three speakers are arranged in a coaxial manner is not disclosed or suggested in the prior art. Moreover, such construction is not a trivial matter, as can fairly be inferred from the absence of any such construction in the body of the prior art. The suggestion that implementation of a conceptual design in Blattner would be an obvious modification of the prior art is unsupported by any record.

Moreover, Applicant respectfully directs the Examiner's attention to *In re Kotzab*, 217 F.3d 1365, 1371, 55 USPQ2d 1313, 1317 (Fed. Cir. 2000) which supports the proposition that the teaching, motivation, or suggestion to combine found in the prior art must be specific. The Kotzab Court stated that "particular findings must be made as to the reason that a skilled artisan, with no knowledge of the claimed invention, would have selected these components for combination in the manner claimed." (emphasis added) *Id.*; *In re Rouffet*, 149 F.3d 1350, 1359, 47 USPQ2d 1453, 1459 (Fed. Cir. 1998) ("even when the skill in the art is high, the Board must identify specifically the principle, known to one of ordinary skill, that suggests the claimed combination. In other words, the Board must explain the reasons one of ordinary skill in the art would have been motivated to select the references and to combine them to render the claimed invention obvious."); *In*

*re Dance*, 160 F.3d 1339, 1343, 48 USPQ2d 1635, 1637 (Fed. Cir. 1998) (there must be some motivation, suggestion, or teaching of the desirability of making the specific combination that was made by the applicant).

Applicant respectfully submits that the Examiner has not provided specific evidence which shows any teaching, motivation, or suggestion to combine a midrange/tweeter module, comprising a midrange speaker and a separate coaxial tweeter, with an additional coaxial speaker. A general statement that one of ordinary skill in the art would have combined a midrange/tweeter module comprising a midrange speaker and a separate coaxial speaker, for the purpose of further improving frequency directivity, does not appear to be sufficiently specific as required by the *Kotzab* Court. The Examiner has not provided any specific reasons that one of ordinary skill in the art would have devised the claimed invention over other types of speaker combinations. Also, as understood, Blattner does not suggest improving directivity. Rather, the high frequency speaker of Blattner is directed to a construction where the speakers are intended to be “uniformly non- directive” (page 1, line 39-43, page 2, line 84-95) Hence, there appears to be no suggested motivation to combine even the conceptual teachings of Blattner for use in the construction of David.

For the foregoing reasons, the cited prior art does not disclose, suggest or make obvious the invention recited in Claim 1 as well as its dependent claims. Furthermore, Applicant respectfully submits that the dependent claims of Claim 1 are in condition for allowance for being dependent upon allowable base claim 1.

**CONCLUSION**

For the foregoing reasons, Applicant respectfully submits that the claims as amended are now in condition for allowance. An early notice to such effect is therefore respectfully requested. If the Examiner should have any suggestions for expediting allowance of the application, the Examiner is invited to contact Applicant's representative at the telephone number listed below.

If any additional fee is required, please charge Deposit Account #19-4330.

Respectfully submitted,

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